IN THE

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, a [illegible] poration,

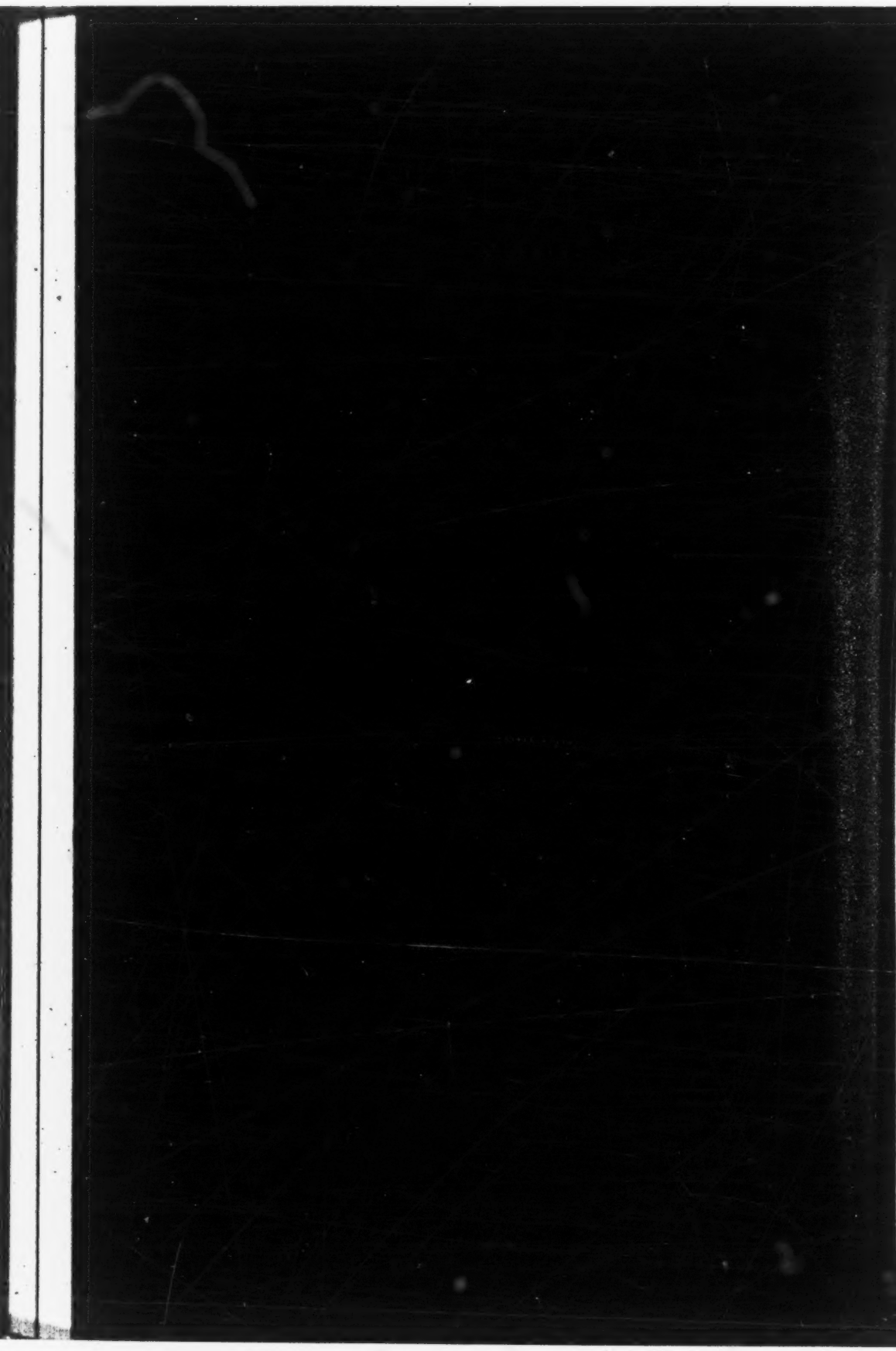
vs.

ERNEST PARRISH and ELSIE PARRISH, his wife,

APPEAL FROM THE SUPREME COURT OF WASHINGTON

BRIEF OF APPELLANT

JOHN W. [illegible]



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REFERENCE TO OFFICIAL REPORT OF THE OPINION DELIVERED IN THE COURT BELOW.

Ernest Parrish and Elsie Parrish, his wife, Appellants, vs. West Coast Hotel Company, Respondent, 85 Wash. Dec. 517, 55 P. (2nd) 1083.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, a corporation,

Appellant,

vs.

ERNEST PARRISH and ELSIE PARRISH, his wife,

Appellees.

APPEAL FROM THE SUPREME COURT OF WASHINGTON.

BRIEF OF APPELLANT

STATEMENT OF THE CASE.

Elsie Parrish, an adult woman, was employed intermittently from August of 1933 to May of 1935

as a chamber maid in the hotel of the appellant at Wenatchee, Washington. During this period Elsie Parrish received compensation at a rate which was less than that established by the Industrial Welfare Committee under the terms of Chapter 174 of the Laws of 1913. This statute is quoted in full in the appendix hereto.

Under this statute it is specifically provided as follows:

> "Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.
>
> "Sec. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women." (Subsequent legislation abolished the Industrial Welfare Commission and substituted an Industrial Welfare Committee consisting of certain designated state officers to act in the place of the original commission.)

Upon the termination of her employment in May of 1935 Elsie Parrish made demand upon her

employer for the difference between the wages she had been paid and the wages which would have been due under the terms of the above described Act. This sum, $216.19, not being paid, Elsie Parrish (being joined by her husband to comply with the community property laws of the State of Washington) brought suit against her employer, the appellant, under the provision of section 18 of the above described Act, which provides that where less than the legal minimum wage has been paid to an employee she may sue for and recover the difference, together with attorney's fees and costs. In addition to the difference between the minimum wage and the wage actually paid the suit was for the sum of $17.00 which was admitted due by the employer, but the acceptance of which had been refused by Elsie Parrish for the reason that it was tendered to her in full of all obligation of the employer to her.

Upon the case being submitted to the Superior Court of the State of Washington for Chelan County the Hon. W. O. Parr, judge of said court, ruled that the case of *Adkins vs. Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, was decisive as to the constitutionality of Chapter 174 of the Laws of 1913, of the State of Washington, and that no recovery could be had by Elsie

Parrish, except for the balance of wages admittedly due her, since the statute under which she sought relief was unconstitutional under the Fourteenth Amendment of the Constitution of the United States.

Elsie Parrish and her husband appealed from this decision to the Supreme Court of the State of Washington, where it was held, in the decision before cited, that the statute, Chapter 174 of the Laws of 1913, was not unconstitutional as being in violation of the Fourteenth Amendment to the Constitution of the United States, and that she was, therefore, entitled to the relief for which she prayed.

From this decision of the Supreme Court of the State of Washington upholding the constitutionality of this statute, this appeal was brought to this court, after having exhausted all remedies within the judicial system of the State of Washington.

(The printed record was not available at the time it became necessary to print this brief to file it within the time limits of the rules of court. For this reason, and because of the simplicity of the facts in the case and the lack of controversy over the facts, reference to the printed record is omitted.)

SPECIFICATION OF ASSIGNED ERRORS RELIED UPON.

1. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623-7640, inclusive, entitled "Minimum Wages for Women," approved March 24, 1913, is unconstitutional and void and repugnant to section 1, Article XIV of the Constitution of the United States insofar as it attempts to regulate the wages of adult women, without due process of law, in that it deprives appellant of the right to contract.

2. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's Revised Statutes 1932, section 7623-7640, inclusive, entitled "Minimum Wages for Women," approved March 24, 1913, is unconstitutional and void as repugnant to section 1, Article XIV of the Constitution of the United States, in that it impairs the freedom of contract of the appellant.

3. That the Supreme Court of the State of Washington erred in ruling that the aforesaid statute of the State of Washington was a valid or constitutional regulation.

SUMMARY OF ARGUMENT.

I.

THIS CASE DOES NOT BRING TO THE COURT A NEW POINT OF LAW BUT, ON THE CONTRARY, RESUBMITS A QUESTION WHICH HAS BEEN REPEATEDLY DECIDED IN FAVOR OF THE CONTENTIONS OF THE APPELLANT.

(a) *The disputed statute, Chapter 174 of the Laws of Washington of 1913, as indicated by its title, was passed by the legislature of Washington in the year 1913 prior to any consideration of the principles of minimum wage legislation by the Supreme Court of the United States.*

(b) *Adkins vs. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, and companion cases decided subsequent to the enactment of the Washington legislation, definitely condemn such legislation as the Washington minimum wage law.*

(c) *A comparison of the Washington statute with the minimum wage laws subsequently presented to the Supreme Court of the United States shows that it contains all of the vices in the legislation heretofore condemned.*

II.

THAT THE SUPREME COURT OF THE STATE OF WASHINGTON ERRED IN ATTEMPTING TO DISTINGUISH THIS CASE FROM THE ADKINS CASE ON THE GROUND THAT (1) THE ADKINS CASE PASSED ONLY UPON AN ENACTMENT OF CONGRESS WHICH WOULD NOT HAVE THE POLICE POWER OF A STATE AND (2) THE SUPREME COURT OF THE UNITED STATES WILL NOT DISREGARD THE FINDING OF THE LEGISLATURE OF WASHINGTON AND THE SUPREME COURT THAT SUCH LEGISLATION IS DESIRABLE IN WASHINGTON.

(a) *The power of Congress within the District of Columbia is as broad as that of the state within its own territory.*

(b) *In any event the subsequent cases passing upon the states' legislation are directly in point.*

(c) *The state legislature and the State Supreme Court can not deprive a person of his constitutional rights by merely stating that the enactment is made as an exercise of the police power for the correction of an existing evil.*

ARGUMENT.

THIS CASE DOES NOT BRING TO THE COURT A NEW POINT OF LAW BUT, ON THE CONTRARY, RESUBMITS A QUESTION WHICH HAS BEEN REPEATEDLY DECIDED IN FAVOR OF THE CONTENTION OF THE APPELLANT.

(a) *The disputed statute, Chapter 174 of the Laws of Washington of 1913, as indicated by its title, was passed by the legislature of Washington in the year 1913 prior to any consideration of the principles of minimum wage legislation by the Supreme Court of the United States.*

In considering the Washington statute we desire to emphasize the fact that it was passed in 1913, long prior to the decision in the *Adkins* case and at a time when the legislature did not have the benefit of the views expressed by the Supreme Court of the United States in that decision. Also, it is to be noted that the statute does not represent any effort to meet an emergency or any unusual situation, but is designed to constitute a part of the regular statutory laws of the state, without respect to any particular situation, which the legislature may have had before it at the time of the passage of the law.

The substance of the Act is set forth in paragraph 2 which reads as follows:

> "Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance."

It is to be noted that this statute sets up only one standard, that is, whether or not the wage is adequate for the maintenance of the adult woman worker. As is true of all statutes passed during this period, it makes no attempt to require that the minimum wage have any relation to the reasonable value of the services rendered.

(b) *Adkins vs. Children's Hospital, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, and companion cases decided subsequent to the enactment of the Washington legislation, definitely condemn such legislation as the Washington minimum wage law.*

Subsequent to the passage of the Washington minimum wage law the case of *Adkins vs. Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, was decided by the Supreme Court of the United States in 1923. In considering the minimum wage law which had been passed by Congress for the District of Columbia the court, at page 558, stated as follows:

"The feature of this statute which, perhaps more than any other, puts upon it the stamp of invalidity is that it exacts from the employer an arbitrary payment for a purpose and upon a basis having no causal connection with his business, or the contract, or the work the employee engages to do. The declared basis, as already pointed out, is not the value of the service rendered, but the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health, and morals. The ethical right of every worker, man or woman, to a living wage, may be conceded. One of the declared and important purposes of trade organizations is to secure it. And with that principle and every legitimate effort to realize it in fact, no one can quarrel; but the fallacy of the proposed method of attaining it is that it assumes that every employer is bound, at all events, to furnish it. The moral requirement, implicit in every contract of employment, viz., that the amount to be paid and the service to be rendered shall bear to each other some relation of such equivalence, is completely ignored. The necessities of the employee are alone considered, and these arise outside of the employment, are the same when there is no employment, and as great in one occupation as in another. Certainly the employer, by paying a fair equivalent for the service rendered, though not sufficient to support the employee, has neither caused nor contributed to her poverty. On the contrary, to the extent of what he pays, he has relieved it. In principle, there can be no difference between the case of selling labor and the case of selling goods. If one goes to the butcher, the baker, or grocer to buy food, he is morally entitled to obtain the worth of his money, but he is not entitled to more. If what he gets is worth what he pays, he is not justified in de-

manding more simply because he needs more; and the shopkeeper, having dealt fairly and honestly in that transaction, is not concerned in any peculiar sense with the question of his customer's necessities. Should a statute undertake to vest in a commission power to determine the quantity of food necessary for individual support, and require the shopkeeper, if he sell to the individual at all, to furnish that quantity at not more than a fixed maximum, it would undoubtedly fall before the constitutional test. The fallacy of any argument in support of the validity of such a statute would be quickly exposed. The argument in support of that now being considered is equally fallacious, though the weakness of it may not be so plain. A statute requiring an employer to pay in money, to pay at prescribed and regular intervals, to pay the value of the services rendered, even to pay with fair relation to the extent of the benefit obtained from the service, would be understandable. But a statute which prescribes payment without regard to any of these things, and solely with relation to circumstances apart from the contract of employment, the business affected by it, and the work done under it, is so clearly the product of a naked arbitrary exercise of power, that it cannot be allowed to stand under the Constitution of the United States."

After the decision of the *Adkins* case the District Court of the United States for the District of Arizona held the Arizona minimum wage law for women unconstitutional, and upon appeal the decision was affirmed. *Murphy vs. Sardell,* 269 U. S. 530.

Again in 1927 the minimum wage law of Ar-

kansas was held unconstitutional by the District Court of the United States for the Eastern District of Arkansas. Upon appeal in the case of *Donham vs. West-Nelson Manufacturing Company*, 273 U. S. 657, it was determined that the Arkansas act was unconstitutional under the two preceding cases.

The unconstitutionality of this type of minimum wage legislation seems to have been generally accepted by the bench, bar and public subsequent to this last decision and no further litigation upon this subject appears until *Morehead vs. New York ex rel. Tipaldo*, ... U. S. ....., 80 L. Ed. Adv. Op. 921 (1936).

In the *Morehead* case the court again restated its position using the following pertinent language:

> "The decision and the reasoning upon which it rests clearly show that the State is without power by any form of legislation to prohibit, change or nullify contracts between employers and adult women workers as to the amount of wages to be paid."
>
> * * * * * *
>
> " * * * And utterly without significance upon the question of power is the suggestion that the New York prescribed standard includes value of service with cost of living whereas the District of Columbia standard was based upon the latter alone. As shown above, the dominant issue in the *Adkins* case was whether Congress had power to establish minimum wages for adult women workers in the District of Colum-

bia. The opinion directly answers in the negative. The ruling that defects in the prescribed standard stamped that Act as arbitrary and invalid was an additional ground of subordinate consequence."

"* * * And, after assuming that women would not be employed at the wages fixed unless they were earned or unless the employer could pay them, the opinion says (p. 570): 'But the ground on which the law is held to fail is fundamental and therefore it is unnecessary to consider matters of detail.' If the decision of the court turned upon the question of the validity of the particular standard, that question could not have been ignored by the justices who were in favor of upholding the Act. Clearly they understood—and rightly—that, by the opinion of the court, it was held that Congress was without power to deal with the subject at all."

The statements of the court would clearly indicate the invalidity of the legislative enactment which is before the court in this case.

(c) *A comparison of the Washington statute with the minimum wage laws subsequently presented to the Supreme Court of the United States shows that it contains all of the vices in the legislation heretofore condemned.*

A brief comparison of the statutes which were involved in the previous decisions clearly show the vulnerability of the Washington act.

The District of Columbia Act, being 40 Stat-

utes at Large 960, chap. 174, Comp. Stat. sec. 3421½a, Fed. Stat. Anno. Supp. 1919 p. 234, provided for the same substantial machinery as the Washington act for the determination of a minimum wage, setting up a board which was authorized to conduct a general investigation and by section 9 of the Act:

> "To ascertain and declare, in the manner hereinafter provided, the following things: (a) Standards of minimum wages for women in any occupation within the District of Columbia, and what wages are inadequate to supply the necessary cost of living to any such women workers to maintain them in good health and to protect their morals; * * * "

A consideration of the mechanics of the law and the essential wording as set forth in the *Adkins* decision shows it to be a substantial duplicate of the Washington law.

In the case of the Arizona statute, this, from the records before us, was a direct attempt to fix a minimum wage by legislative fiat without the intervention of any board or commission to act as a fact finding body, the Arizona law reading in effect as follows:

> "No person * * * shall employ any female in any store, office, shop, restaurant, dining room, hotel, rooming house, laundry or manufacturing establishment at a weekly wage of

less than Sixteen Dollars ($16.00) per week; a lesser amount being hereby declared inadequate to supply the necessary cost of living to any such female, to maintain her health, and to provide her with the common necessaries of life." Laws of Arizona, 1923, chap. 3, sec. 1.

In the case of the Arkansas statute, we have an extensive act designed to cover all the various relationships which may occur in respect to the employment of women in industry. As shown in Crawford and Moses' Digest of the Statutes of Arkansas (1921) this act by section 7108 establishes a minimum wage. The section reads as follows:

"Sec. 7108. Minimum Wage. It shall be unlawful for any employer of labor mentioned in section 7102 (referring to a section fixing a nine-hour day for women) to pay any female worker in any establishment or occupation less than the wage specified in this section, to-wit, except as hereinafter provided: All female workers who have had six months' practicable experience in any line of industry or labor shall be paid not less than one dollar and twenty-five cents per day. * * * " (The balance of this section provides for inexperienced workers and part time workers.)

Under section 7111 of the act the Industrial Commission of Arkansas is given authority to readjust the wage by means of the following procedure:

"Sec. 7111. Authority to Establish Minimum Wage. If said commission should find, after an investigation, that a lower minimum

rate of wages is adequate to supply a woman or minor female worker engaged in any occupation, trade or industry the necessary cost of proper living and to maintain the health and welfare of such woman or minor female worker, (they) may, after a public hearing duly held, at which time all interested employers and employees are given a reasonable opportunity to present their arguments, issue an order establishing a minimum wage rate that in their judgment is reasonable and said rate so established shall be the legal minimum wage in the industry or occupation affected, and should said commission find, after said investigation, that the minimum wage specified in section 7108 is insufficient to adequately supply a woman or minor female worker engaged in any occupation, trade or industry the necessary cost of proper living and to maintain the health and welfare of such women or other female worker (they) may, after public hearing duly held, at which time all interested parties are given a reasonable opportunity to present their argument, issue an order establishing a higher minimum wage for female workers that in the judgment of the commission is reasonable, and said minimum wage rate, so established by said commission, shall be the legal minimum wage in the industry or occupation affected."

A consideration of these three statutes will show that they are substantially identical with that which is involved in this case, and are all designed substantially to operate by means of the same machinery, and to effect the same purpose.

We will not unduly lengthen this brief by discussing the statute of New York which was involved

in the *Tipaldo* case, since it was a statute which was drawn during the depression period and attempted in part to eliminate some of the objections which had been made to the prior statutes. Suffice it to say that it is the same general statute, except that it does not contain all of the vices which the foregoing statutes contain.

From a consideration of the Washington statute, the prior decisions of this court, and the identical nature of the Washington statute with the statutes involved in the prior decisions, we respectfully submit that the Washington decision should not be permitted to stand.

II.

THE SUPREME COURT OF THE STATE OF WASHINGTON ERRED IN ATTEMPTING TO DISTINGUISH THIS CASE FROM THE ADKINS CASE ON THE GROUNDS THAT (1) THE ADKINS CASE PASSED ONLY UPON AN ENACTMENT OF CONGRESS WHICH WOULD NOT HAVE THE POLICE POWER OF A STATE AND (2) THE SUPREME COURT OF THE UNITED STATES WILL NOT DISREGARD THE FINDINGS OF THE LEGISLATURE OF WASHINGTON AND THE SUPREME COURT THAT SUCH LEGISLATION IS DESIRABLE IN WASHINGTON.

The position of the court below may be best summarized by quoting three paragraphs from the decision appealed from:

> "The legal duty placed upon the employer by our minimum wage law is that he must pay women in his employ in wages a sum found to be necessary for the maintenance of the health as well as the morals of the employee. If the wages paid equal or are in excess of the cost of the maintenance of a normal health standard, the state's concern in the matter ceases. If the employer pays less than the amount found to be the minimum cost of the maintenance of the normal health standard by virtue of his more secure and powerful economic position, the transaction savors of exploitation."
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> * * * * * *
>
> "We held in *Larsen vs. Rice*, 100 Wash. 642, 171 Pac. 1037, that the controversy there, which differs in no important particular from the controversy here, had an added element not found in the ordinary controversy by the individual. It was not wholly a private concern. It was affected with a public interest, the state having declared the minimum wage of a certain amount to be necessary. Therefore, the state has an interest in the way that the fixed compensation is actually paid. The statute is protective of the public as well as the wage earner.
>
> "If the state legislature and state supreme court find that the statute is of a public interest, the supreme court of the United States will accept such judgment in the absence of facts to support the contrary conclusion. Unless the supreme court of the United States can find beyond question that chapter 174, Laws of 1913, p. 602. Rem. Rev. Stat., section 7623 (P. C.

> Sec. 3256), *et seq.*, is a plain, palpable invasion of rights secured by the fundamental law and has no real or substantial relation to the public morals or public welfare, then the law must be sustained. The United States supreme court has not yet held that a state statute such as the one in the case at bar is unconstitutional, and until such time—*Adkins vs. Children's Hospital,* 261 U. S. 525, 43 S. Ct. 394, 24 A. L. R. 1238, is not controlling—we shall adhere to our holding in the case of *Larsen vs. Rice,* 100 Wash. 642, 171 Pac. 1037; and *Spokane Hotel Co. vs. Younger,* 113 Wash. 359, 194 Pac. 595. It does not appear upon the face of the minimum wage law or from any facts of which the supreme court of the United States must take judicial notice that, in the state of Washington, evils did not exist for which our minimum wage law was an appropriate remedy. The action of the state legislature and of this court indicates that such evils do exist."

It is to be noted that the Supreme Court of Washington bases its decision on two points: (1) That the *Adkins* case was not binding since the act involved was an act of Congress; and (2) that the legislature and the state court having determined that the act is in the public interest, then that therefore the Supreme Court of the United States could not grant relief.

(a) *The power of Congress within the District of Columbia is as broad as that of the state within its own territory.*

In attempting to distinguish the *Adkins* case

the Supreme Court of the State of Washington took the view that the right of Congress to legislate for the District of Columbia was not sufficiently broad to include any right to make police regulations. In support of this position the court says in its decision:

> "That the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states, needs no citation of sustaining authority. The police power of a state was not given to the Federal government nor prohibited by the constitution to the people of the respective states, hence it is one of the reserved powers."

We believe that the contrary of this situation is true, however, as to the right of Congress to legislate as to the District of Columbia in that Congress has all of the general rights of a legislature, including police power, which the states would have in their respective jurisdictions, subject only to the express limitations of the Federal Constitution.

In the case of *Shoemaker vs. United States*, 147 U. S. 282, the court states as follows on page 298:

> "We are not called upon, by the duties of this investigation, to consider whether the alleged restriction on the power of eminent domain in the general government, when exer-

cised within the territory of a State, does really exist, or the extent of such restriction, for we are here dealing with an exercise of the power within the District of Columbia, over whose territory the United States possess, not merely the political authority that belongs to them as respects the States of the Union, but likewise the power 'to exercise exclusive legislation in all cases whatsoever over such District.' Constitution, Art. I, Sec. 8, par. 17."

Likewise in the case of *Capital Traction Company vs. Hoff*, 174 U. S. 1, 19 S. Ct. 580, 43 L. Ed. 873, the court stated as follows:

"I. The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the National Government, has the entire control over the District of Columbia for every purpose of government, national or local. It may exercise within the District all legislative powers that the legislature of a State might exercise within the State; and may vest and distribute the judicial authority in and among courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States."

Howard vs. Illinois Central Railroad Company, 207 U. S. 453, 28 S. Ct. 141, 52 L. Ed. 297;

Stoutenburgh vs. Hennick, 129 U. S. 141, 9 S. Ct. 256, 32 L. Ed. 637.

The authorities cited substantially sustain the

proposition that an act of Congress applying to the District of Columbia is limited only by the express provisions of the Federal Constitution limiting the powers of Congress. None of the limitations would be in any way effective to differentiate the minimum wage legislation of the *Adkins* case from that of any similar legislation of the respective states.

(b) *In any event the subsequent cases passing upon the states' legislation are directly in point.*

Irrespective of the powers of Congress over the District of Columbia the subsequent decisions of the Supreme Court of the United States heretofore cited holding invalid the minimum wage laws of Arizona and Arkansas are decisive of the present case.

In addition to this we have the most recent pronouncement of the court in the *Morehead* case where, in the concluding paragraph of the majority opinion, it is stated as follows:

> "The New York court's decision conforms to ours in the *Adkins* case, and the later rulings that we have made on the authority of that case. That decision was deliberately made upon careful consideration of the oral arguments and briefs of the respective parties and also of briefs submitted on behalf of States and others as *amici curiae*. In the Arizona case the attorney general sought to distinguish the District of Columbia Act from the legislation then be-

> fore us and insisted that the latter was a valid exertion of the police power of the State. Counsel for the California commission submitted a brief *amicus curiae* in which he elaborately argued that our decision in the *Adkins* case was erroneous and ought to be overruled. In the *Arkansas* case the state officers, appellants there, by painstaking and thorough brief presented arguments in favor of the same contention. But this court, after thoughtful attention to all that was suggested against that decision, adhered to it as sound. And in each case, being clearly of opinon that no discussion was required to show that, having regard to the principles applied in the *Adkins* case, the state legislation fixing wages for women was repugnant to the due process clause of the Fourteenth Amendment, we so held and upon the authority of that case affirmed *per curiam* the decree enjoining its enforcement. It is equally plain that the judgment in the case now before us must also be affirmed."

It is particularly interesting to note that in the *Adkins* case the attorneys generals for the states of Oregon, New York, California, Kansas, and Wisconsin filed briefs in support of the legislation.

(c) *The state legislature and the State Supreme Court can not deprive a person of his constitutional rights by merely stating that the enactment is made as an exercise of the police power for the correction of an existing evil.*

If the Washington court's theory is to be accepted, the fact that the state legislature and state

court find that a law is a proper exercise of the police power, then the Supreme Court of the United States is powerless to grant any relief against the legislation. The mere statement of this proposition shows its fallacy. If it were accepted, then the Constitution would be a nullity.

This theory was disposed of in the case of *Meyer vs. Nebraska,* 262 U. S. 399, 67 L. Ed. 1042, where, after the legislature of Nebraska and the Supreme Court of Nebraska had at great length stated the necessity for the particular legislation governing the teaching of foreign languages in the schools, the court stated as follows:

> "It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state.' It is also affirmed that the foreign-born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type, and the public safety is imperiled.
>
> "That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. The

protection of the Constitution extends to all,—to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution,—a desirable end cannot be promoted by prohibited means."

The same proposition is disposed of in the case of *Minnesota vs. Barber,* 136 U. S. 313, at page 319, where the court states as follows:

"The presumption that this statute was enacted, in good faith, for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, cannot control the final determination of the question whether it is not repugnant to the Constitution of the United States. There may be no purpose upon the part of a legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation, be destructive of rights granted or secured by the Constitution. In such cases the courts must sustain the supreme law of the land by declaring the statute unconstitutional and void. This principle of constitutional interpretation has been often announced by this court."

And the matter was again disposed of in the case of *Buchanan vs. Warley,* 245 U. S. 60, at page 74, where the court stated:

"The authority of the State to pass laws in the exercise of the police power, having for their object the promotion of the public health,

safety and welfare is very broad as has been affirmed in numerous and recent decisions of this court. Furthermore, the exercise of this power, embracing nearly all legislation of a local character, is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases."

We respectfully submit that Chapter 174 of the Laws of Washington, 1913, is unconstitutional and void, so far as it attempts to fix a minimum wage for adult women, for the reason that it is in conflict with the Fourteenth Amendment of the Constitution of the United States, that the judgment of the Supreme Court of the State of Washington should be reversed, and the judgment of the Superior Court of the State of Washington for Chelan County directed to be affirmed.

Respectfully submitted,

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APPENDIX.

The pertinent parts of Chapter 174, Laws of 1913, page 602, being section 7623, *et seq.*, of Remington's Revised Statutes of Washington, are as follows:

> "Section 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power, declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.
>
> "Sec. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.
>
> "Sec. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held under to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

Under Chapter 7, Laws of 1921, page 46, section 82, and page 68, section 134, being Remington's

Revised Statutes (1932) Section 10840 and Section 10893 respectively the Industrial Welfare Commission was abolished, and its duties assigned to the Industrial Welfare Committee, consisting of the Director of Labor and Industries, the Supervisor of Industrial Insurance, the Supervisor of Industrial Relations, the Industrial Statistician, and the Supervisor of Women in Industry.

> "Sec. 6. It shall be the duty of the Commission to ascertain the wages and conditions of labor of women and minors in the various occupations, trades and industries in which said women and minors are employed in the State of Washington. * * *
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> "Sec. 9. The commission shall specify times to hold public hearings, at which times employers, employees or other interested persons may appear and give testimony as to the matter under consideration. The commission shall have power to subpoena witnesses and to administer oaths. * * *
>
> "Section 10. If, after investigation, the commission shall find that in any occupation, trade or industry, the wages paid to female employees are inadequate to supply them necessary cost of living and to maintain the workers in health, or that the conditions of labor are prejudicial to the health or morals of the workers, the commission is empowered to call a conference composed of an equal number of representatives of employers and employees in the occupation or industry in question, together with one or more disinterested persons representing the public; but the representatives of the pub-

lic shall not exceed the number of representatives of either of the other parties; and a member of the commission shall be a member of such conference and chairman thereof. The commission shall make rules and regulations governing the selection of representatives and the mode of procedure of said conference, and shall exercise exclusive jurisdiction over all questions arising as to the validity of the procedure and of the recommendations of said conference. On request of the commission, it shall be the duty of the conference to recommend to the commission an estimate of the minimum wage adequate in the occupation or industry in question to supply the necessary cost of living, and maintain the workers in health, and to recommend standards of conditions or labor demanded for the health and morals of the employees. The findings and recommendations of the conference shall be made a matter of record for the use of the commission.

"Sec. 11. Upon the receipt of such recommendations from a conference, the commission shall review the same and may approve any or all of such recommendations, or if may disapprove any or all of them and recommit the subject or the recommendations disapproved of, to the same or a new conference. After such approval of the recommendations of a conference the commission shall issue an obligatory order to be effective in sixty (60) days from the date of said order, or if the commission shall find that unusual conditions necessitate a longer period, then it shall fix a later date, specifying the minimum wage for women in the occupation affected, and the standard conditions of labor for said women; and after such order is effective, it shall be unlawful for any employer in said occupation to employ women over eighteen (18) years of age for less than the rate of

wages, or under conditions of labor prohibited for women in said occupation. The commission shall send by mail so far as practicable to each employer in the occupation in question a copy of the order, and each employer shall be required to post a copy of said order in each room in which women affected by the order are employed. When such commission shall specify a minimum wage hereunder the same shall not be changed for one year from the date when such minimum wage is so fixed.

"Sec. 12. Whenever wages or standard conditions of labor have been made mandatory in any occupation, upon petition of either employers or employees, the commission may at its discretion reopen the question and re-convene the former conference or call a new one, and any recommendations made by such conference shall be dealt with in the same manner as the original recommendations of a conference.

"Sec. 13. For any occupation in which a minimum rate has been established, the commission through its secretary may issue to a woman physically defective or crippled by age or otherwise, or to any apprentice in such class of employment or occupation as usually requires to be learned by apprentices, a special license authorizing the employment of such licensee for a wage less than the legal minimum wage; and the commission shall fix the minimum wage for said person, such special license to be issued only in such cases as the commission may decide the same is applied for in good faith and that such license for apprentices shall be in force for such length of time as the said commission shall decide and determine is proper.

* * * * * *

"Sec. 18. If any employee shall receive less than the legal minimum wage, except as hereinbefore provided in section 13, said employee shall be entitled to recover in a civil action the full amount of the legal minimum wage as herein provided for, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for such lesser wage. In such action, however, the employer shall be credited with any wages which have been paid upon account.

"Sec. 19. All questions of fact arising under this act shall be determined by the commission and there shall be no appeal from its decision upon said question of fact. Either employer or employee shall have the right of appeal to the superior court on questions of law.

* * * * * * "